

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

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**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**VALERO REFINING-TEXAS, L.P.**

**Defendant.**  
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) **Civil Action No.** \_\_\_\_\_  
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**COMPLAINT**

Plaintiff, the United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action under Section 311 of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1321, as amended by the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., for assessment of civil penalties for the discharge of oil into navigable waters of the United States from defendant's Valero Refinery West Plant in Corpus Christi, Nueces County, Texas. Defendant discharged at least 3,400 barrels (142,800 gallons) of oil into the Corpus Christi Ship Channel from a containment berm located on the edge of the Ship Channel on June 1, 2006.



## **JURISDICTION, AUTHORITY, AND VENUE**

2. This Court has jurisdiction over this matter pursuant to Sections 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E) and (n), and 28 U.S.C. §§ 1331, 1345, 1355.

3. Authority to bring this action is vested in the United States Department of Justice by Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

4. Venue is proper in the Southern District of Texas under Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E), and 28 U.S.C. §§ 1391 and 1395 because the claim arose in this district and defendant is located and doing business in this district.

## **DEFENDANT**

5. Defendant Valero Refining-Texas, L.P. is a Texas corporation with its headquarters in San Antonio, Texas.

6. At all times relevant to this action, defendant owned and operated the Valero Refinery West Plant and the containment berm from which oil was discharged in violation of the CWA. The refinery is located at 5900 UpRiver Road in Corpus Christi, Texas.

## **STATUTORY FRAMEWORK FOR CWA CLAIMS**

### **Civil Penalties**

7. Section 311(b) of the CWA prohibits the “discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States [and] adjoining shorelines . . . in such quantities as may be harmful,” 33 U.S.C. § 1321(b)(3), “to the public health or welfare or the environment of the United States,” 33 U.S.C. § 1321(b)(4). This prohibition supports the national objective “to restore and maintain the chemical, physical, and biological



integrity of the Nation's waters." 33 U.S.C. § 1251(a).

8. Section 311(b)(7)(A) of the CWA mandates that "[a]ny person who is the owner, operator, or person in charge of any . . . onshore facility . . . from which oil . . . is discharged in violation of paragraph (3), shall be subject to a civil penalty . . . ." 33 U.S.C. § 1321(b)(7)(A).

9. Pursuant to its authority under the CWA, EPA has promulgated regulations that define "harmful" quantities of oil to include quantities that "[c]ause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines." 40 C.F.R. § 110.3.

10. Section 311(b)(7)(A) of the CWA establishes the civil penalty for violations of Section 311(b)(3) as \$32,500 per day of violation or an amount up to \$1,100 per barrel discharged. 33 U.S.C. §1321(b)(7)(A); 40 C.F.R. § 19.4 (2006) (establishing, effective March 15, 2004, the civil penalty amounts under Section 311(b)(7) were increased to the listed amounts by the Civil Monetary Penalty Inflation Adjustment Rule).

11. The per barrel penalty is increased to an amount up to \$4,300 per barrel where the violation is the result of gross negligence or willful misconduct. 33 U.S.C. §1321(b)(7)(D); 40 C.F.R. § 19.4.

## **CAUSE OF ACTION**

### **Civil Penalties for Violation of Section 311 of the Clean Water Act**

12. Plaintiff incorporates by reference all allegations stated in paragraphs 1-11.

13. On June 1, 2006, at least 3,400 barrels of oil discharged into the Corpus Christi Ship Channel from a containment berm at the Valero Refinery West Plant in Corpus Christi, Texas. The discharge resulted in the presence of a sheen of oil on water and caused oil staining



of the adjoining shoreline and marshes along the Ship Channel.

14. Defendant is a “person” within the meaning of Sections 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

15. Defendant is the “owner” and “operator” of an onshore facility from which oil was discharged within the meaning of Section 311(a)(6), 33 U.S.C. § 1321(a)(6).

16. Defendant’s containment berm where the discharge occurred was an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

17. The flow of oil into the Corpus Christi Ship Channel constituted a “discharge” of oil within the meaning of Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

18. The discharge was of “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

19. The discharge was a discharge into or upon “navigable waters” of the United States within the meaning of Sections 311 and 502(7) of the CWA, 33 U.S.C. §§ 1321, 1362(7). The discharge flowed directly into the Ship Channel. The Ship Channel is regularly used in interstate commerce. The Valero Refinery has docks on the Ship Channel for loading and unloading oil to and from tanker ships.

20. The discharge was in a quantity “as may be harmful” within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. 110.3. At least 3,400 barrels of oil were discharged.

21. The discharge was a violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

22. As a result of defendant’s violation of Section 311(b)(3) of the CWA, Defendant



is liable under Section 311(b)(7)(A) for a civil penalty of up to \$1,100 per barrel discharged, or, if it is established that the violations are the result of gross negligence or willful misconduct, a penalty of up to \$4,300 per barrel discharged under Section 311(b)(7)(D).

23. In April 2004, at least 8,000 gallons of oil were discharged into the Corpus Christi Ship Channel from the same containment berm when a portion of the berm failed and spilled its contents into the waterway.

### **REQUEST FOR RELIEF**

WHEREFORE, plaintiff, the United States of America, respectfully requests that this Court:

A. Enter judgment against defendant and award the United States civil penalties in an amount up to \$1,100 per barrel of oil discharged for the discharge alleged above, or if it is established that the discharge was the result of gross negligence or wilful misconduct, in an amount up to \$4,300 per barrel discharged;

B. Grant the United States such other relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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